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CHARLES ELMORE CROP
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Supreme Court of the United States

Nos. 820, 821, 822. October Term, 1940.

GERRITSEN BASIN DEVELOPMENT CORPORATION,
Petitioner,

against

THE CITY OF NEW YORK,
Respondent.

REPLY BRIEF OF PETITIONER, GERRITSEN BASIN DEVELOPMENT CORPORATION, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THOS. L. ZIMMERMAN, JR.,
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March 17, 1941

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

Supreme Court of the United States

In the Matter
of
the Application of the City of New York, &c., relative to acquiring right and title to, &c., certain property, &c., near Barren Island, &c., Brooklyn, &c.,
(Jamaica Bay No. 1 Proceeding)

The Same: Oraboss Meadows and Bushes Meadows
(Jamaica Bay No. 2 Proceeding)

The Same: Marine 15th Street
(Addition to Marine Park Proceeding)

Gerritsen Basin Development Corporation,
Petitioner.

The City of New York,
Respondent.

REPLY BRIEF OF PETITIONER, GERRITSEN BASIN DEVELOPMENT CORPORATION, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Respondent, The City of New York, in its Brief in Opposition to the Petition for a Writ of Certiorari, wholly circumvents the point raised by Petitioner that Petitioner's contract expressing its rights in and to the tract of real

estate involved in this matter has been impaired by the decisions of the New York Courts (Trial Court, 100 N. Y. Law Journal 271; affirmed 258 App. Div. 191; affirmed, without opinion, 284 N. Y. 109), which decisions purport to reverse not only a former unanimous decision (248 App. Div. 240; affirmed, without opinion, 275 N. Y. 456) but also an Arbitration Award made in 1696 in favor of Petitioner's predecessor in title and against Respondent's predecessor in title, upon the very issue, i. e., the title to the same tract of lands involved in this present matter.

Petitioner's claim of title is based upon an ancient Government Grant made in 1636 which was interpreted 60 years later in said Arbitration proceeding, and which interpretation, in favor of Petitioner, was affirmed 240 years later by the Appellate Division of the New York Supreme Court (248 App. Div. 240; affirmed 275 N. Y. 456), which Court stated that it had been established with reasonable certainty that the lands described in said ancient Patent of 1636, and interpreted by said Arbitration proceeding, and now claimed by Petitioner, Gerritsen Basin Development Corporation, were within its confines.

A particular contract involving title to real estate was thereby made and affirmed and must be given effect under the provisions of both the State and the Federal Constitutions. The later decisions of the New York Courts which are sought to be reviewed impair that particular contract (*Lehigh Water Company* v. *Easton*, 121 U. S. 388; *Appleby* v. *City of New York*, 271 U. S. 364). The argument of the Respondent herein is based solely upon some hurriedly thought-up testimony of a purported Dutch linguist who disagrees with the interpretation of the original Dutch Patent found by the Arbitrators (men of high standing and qualification in that Dutch community, Rec. Vol. 1, pp. 487-489) 240 years ago.

The Respondent, in its Brief, states that neither decision of the Courts of New York State held that the Arbi-

tration award of 1896 was invalid. This statement is definitely erroneous. The Appellate Division referring to the finding of the Arbitrators as to the running of the creek that is the boundary in dispute, said:

> "This finding cannot be reconciled with the theory we are about to accept (Fol. 7555) * * * Under the circumstances, the finding of the Arbitrators is of such doubtful value that it cannot be allowed to prevail over the evidence of a contrary finding. (Fol. 7556)

Similarly, in the supporting opinion of Mr. Justice Lazansky, quoted at p. 15 of Petitioner's Brief, he pointed out that the Court was disregarding the 1696 Arbitration and the confirmatory Nicholls patent and that the Court was also reversing its earlier decision. The Court of Appeals affirmed, without opinion.

The "fantastic" construction which Respondent claims Petitioner urges this Court to adopt is the construction that was placed upon the same patent by the Appellate Division and the Court of Appeals in the previous case. (Gerritsen Marine Park proceedings, 248 App. Div. 240, Affd. 275 N. Y. 456.)

The writ of certiorari should be allowed.

Dated, March 17th, 1941.

Respectfully submitted,

Thos. L. Zimmerman, Jr.,
Counsel for Petitioner
Gerritsen Basin Development Corporation